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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

SHUTAO H. LIN, as Administrator of the Goods, Chattels and Credits which were of SHU REN LIN, M.D., Deceased; JOSEPH P. MALACYNSKI, as Administrator of the Estate of MICHELLE MALACYNSKI, and JOSEPH P. MALACYNSKI, individually; DONALD R. LYON and SOPHIE H. LYON; and JANE S. SHATKIN, as Executrix of the Estate of LLOYD J. SHATKIN, Deceased,

Petitioners,

vs.

AMERICAN AIRLINES, INC. and McDONNELL DOUGLAS CORPORATION,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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STATEMENT OF THE CASE

These wrongful death actions arose as a result of the May 25, 1979, crash of a DC-10 aircraft manufactured by McDonnell Douglas Corporation ("MDC") and operated by American Airlines, Inc. ("American"), near O'Hare Airport in Chicago, Illinois. The actions of the four petitioners[1] seeking

[1] A total of 156 other actions are also pending in the United States District Court for the Northern District of Illinois. These actions were originally filed in or removed to federal courts in Illinois, California, Michigan, Puerto Rico, and Hawaii. The plaintiffs in those actions have not joined the present petition for certiorari, and arguments that might have been raised on their behalf are consequently not addressed in this response.

certiorari were filed in New York state and federal courts and subsequently transferred by the Judicial Panel on Multi-District Litigation to the Northern District of Illinois.

Defendants American and MDC filed motions to strike all claims for punitive damages. The district court granted American's motion with regard to all actions and denied MDC's motion except with regard to actions originating in Puerto Rico and Hawaii.

The district court reached its decision only after engaging in six separate choice-of-law analyses involving the application of the conflict of laws rules of the six jurisdictions in which the actions were filed—Illinois, California, New York, Michigan, Puerto Rico, and Hawaii. The court determined that the applicable law required by the conflict rules of the four first-named states was that of the defendants' principal place of business—New York in American's case, Missouri in MDC's. Illinois law, or the law of the place of the occurrence, was deemed the applicable law with regard to the Puerto Rico- and Hawaii-originating actions. Illinois and New York do not allow punitive damages to be recovered in wrongful death actions; Missouri does.

The district court also held that, on May 25, 1979, the date of the crash, New York was American's principal place of business. Plaintiffs did not contend otherwise in their briefs filed with the district court. They argued instead, as they do here, that the law of American's "current" place of business should be that chosen. Only in their appeal of the district court's decision with regard to punitive damages against American did the plaintiffs for the first time contend that there was a dispute as to American's principal place of business on the crash date. Oddly, the Plaintiffs' Committee designated for inclusion in the Record on Appeal the transcript of the deposition of Donald Lloyd-Jones, Senior Vice-President of Operations for American. Mr. Lloyd-Jones' testimony is uncon-

troverted proof that on May 25, 1979, American's principal place of business was still New York (Pet. 38a, 38a n. 27).

The Court of Appeals for the Seventh Circuit affirmed the district court's order granting American's motion to strike and reversed the order denying in part the similar motion of MDC.

In making its determinations, the court of appeals employed a different conflict of laws analysis than that undertaken by the district court. In essence, the court of appeals concluded that no matter what state's choice of law rule was used, the applicable law was the same—that of Illinois. The court of appeals also considered plaintiffs' theretofore unraised contention that American's principal place of business on the date of the crash was Texas. It concluded otherwise (Pet. 35a). This petition for certiorari followed.

SUMMARY OF ARGUMENT

United States Supreme Court Rule Number 17 sets forth the considerations upon which a petition for certiorari to this Court will be granted. Plaintiffs' petition asserts none of these.

The choice of law analyses and the factual findings of both the district court and the court of appeals result in a ruling that no punitive damages claim is assertable against American. In arguing otherwise, petitioners incorrectly state and apply New York's choice of law rules. Further, their factual argument as to the whereabouts of American's principal place of business for choice of law purposes is both illogical and inconsistent.

Petitioners' claim that the equal protection clause of the Fourteenth Amendment to the Constitution is violated when a state's common or statutory law allows punitive damages awards in personal injury actions but not in death actions is baseless. The two actions do not involve similarly-situated plaintiffs. Even if they may be deemed to do so, a state's decision to differentiate between personal injury and wrongful death plaintiffs meets the applicable minimum rationality test of this Court.

ARGUMENT

I.

Petitioners cite none of the requisite considerations upon which the issuance of a writ of certiorari is premised.

Rule 17 of the Rules of the United States Supreme Court states that the following considerations are pertinent with regard to review on certiorari: 1) there exists a conflict among lower court decisions on the matter; 2) a federal court has engaged in, or sanctioned in a lower court, a significant departure from the usual judicial proceedings; 3) a lower court has decided an important question of federal law that has not previously been settled, but should be settled, by this Court; or 4) a lower court has decided a federal question in conflict with the decisions of this Court.

Petitioners do not claim that there is a conflict among the lower courts with regard to the constitutionality of states' precluding punitive damages in wrongful death actions (Pet. i). Indeed, the federal courts that have decided the question agree that such statutes are not offensive to the Constitution. They have been held to meet the minimum rationality standard by which such laws are judged. *In re Paris Air Crash,* 622 F. 2d 1315 (9th Cir.), *cert. denied,* 101 S. Ct. 387 (1980); *Huff* v. *White Motor Corp.,* 609 F. 2d 286 (7th Cir. 1979). *See also Johnson* v. *International Harvester Corp.,* 481 F. Supp. 1176 (D. N. D. 1980). The court of appeals in deciding the present question reaffirmed its similar decision in *Huff* (Pet. 15a).

Petitioners make no claim that the courts below departed from accepted judicial standards with regard to their decisions.

There is at issue here no important question of federal law calling for resolution by this Court. Indeed, this Court recently decided against review in a case presenting even more clearly the constitutional issue raised by petitioners here. *Kalinsky* v.

General Dynamics Corp., 101 S. Ct. 387 (1980). Similar constitutional questions have been resolved, with the same result, by courts in New York, the original and eventual forum state for petitioners' actions. *Robert* v. *Ford Motor Co.*, 73 App. Div. 2d 1025, 424 N.Y.S.2d 747 (1980). *Hempel* v. *American Airlines, Inc.*, 15 Aviation Reporter 17,703 (N. Y. Sup. Ct. 1979). In the present actions, the lower courts' decisions with regard to conflict of laws rules were based on and made in accordance with the rules of the several involved states. No federal principles were involved, and petitioners do not claim otherwise.

No federal question is involved in this matter.

In brief, petitioners make no claim that would warrant the issuance of a writ of certiorari.

II.

The choice of law analyses engaged in by the courts below were proper, and by the law of either chosen state, punitive damages are not available in a wrongful death action.

With regard to these petitioners' wrongful death actions, filed in New York, both the district court and the court of appeals applied New York's choice of law rule, in accordance with the dictates of *Klaxon Co.* v. *Stentor Electric Manufacturing Co.*, 313 U. S. 487 (1941), and *Van Dusen* v. *Barrack*, 376 U.S. 612 (1964). New York courts employ the interest-analysis choice of law approach, *Babcock* v. *Jackson*, 12 N.Y. 2d 473, 240 N.Y.S.2d 743, 191 N.E.2d 279 (1965). Although both courts below assessed the various interests of the several states involved in petitioners' actions in accordance with New York practice, their conclusions differed. The district court deemed applicable the law of New York, American's principal place of business on the accident date. The court of appeals concluded that Illinois law would be that chosen by a New

York court. Neither state permits punitive damages in a wrongful death action. N.Y. Est., Powers & Trusts L. § 5-4.3 (McKinney 1967); *Barrett* v. *State,* 85 Misc. 2d 456, 378 N.Y.S.2d 946 (Ct. Claims 1976); Ill. Rev. Stat. (1979), ch. 70, §§ 1, 2; *Mattyasovszky* v. *West Towns Bus Co.,* 21 Ill. App. 3d 46, 313 N. E. 2d 496 (1974), *affirmed,* 61 Ill. 2d 31, 330 N.E.2d 509 (1975). The end result is thus the same.

Petitioners state that only the district court's choice of law analysis was correct. They take issue, however, with the conclusion drawn by that court as a result of its analysis. Petitioners claim that while the law of a defendant's principal place of business is to be looked to in determining its susceptibility to punitive damages, that place of business should be the "current" one. To state the petitioners' position is to expose the illogic of the ever-changing rule petitioners urge upon this Court. Both courts below rejected petitioners' reasoning and held that the relevant date for ascertaining a defendant's principal place of business for choice of law purposes is the date of the occurrence complained of, here the air crash (Pet. 34a, 83a). Petitioners' suggestion that only a mid-litigation move in "derogation" of a plaintiff's right to punitive damages should not be effective to determine the applicable law (Pet. 17) is a "heads we win, tails you lose" proposition. If the move is either *to* or *from* a punitive damages jurisdiction, plaintiffs benefit and defendants lose. Such a rule is intolerable. The "clock-stopping" rule adopted by both courts below comports with the ideals of fairness and predictability, as well as with the analytical principles inherent in choice of law rules.

In support of their argument that the law of Texas, American's current principal place of business, should apply to determine the punitive damages issue, petitioners cite *Miller* v. *Miller,* 22 N.Y.2d 12, 290 N.Y.S.2d 734, 237 N.E.2d 877, *remittatur denied,* 22 N.Y.2d 722, 292 N.Y.S.2d 107, 239 N.E.2d 104 (1968). *Miller* is inapposite on a number of bases. First, it dealt with compensatory damages, limited under the

law of the other involved state—Maine, the accident site and defendants' residence on the accident date. Secondly, such limitations are constitutionally prohibited in New York, Constitution of 1894, art. I, § 18, the domicile of the decedent and his beneficiaries, as well as that of the defendants, who had been New York domiciliaries prior to and after the crash. The New York court in *Miller* specifically noted its concern for its own, the plaintiffs who had lost the decedent's earnings, 237 N.E.2d at 880. Such a situation does not exist here: none of the petitioners or their decedents has any connection with Texas.

On the issue of compensatory damages in the O'Hare crash cases, the district court has already decided that the law of the decedent's or plaintiff's domicile shall control. *In re Air Crash Disaster Near Chicago, Illinois,* 480 F. Supp. 1280 (N.D. Ill. 1979) (Pet. 79a). In essence, that was the holding in *Miller* as well. Petitioners' efforts to analogize *Miller*'s choice of law reasoning to the present situation is tortuous at best. Petitioners seemingly ignore the precise nature of the issue to which the chosen law will be applied—punitive damages. The interest of a state that precludes such damages is in protecting its domiciliaries. That interest is not coterminus with a state's interest in providing full compensatory damages to those wronged. *Miller* did not have to draw these distinctions.

Petitioners' fallback argument is that defendant American was not actually headquartered in New York on the date of the crash. This argument hinges on petitioners' claim that the pleadings are "in dispute" (Pet. 4) as to this issue. However, as the court of appeals noted (Pet. 35a), the confusion is largely attributable to plaintiffs' own lack of specificity in pleading. In addition, as the court of appeals further noted, the only factual proof in the record, the deposition of American's Vice-President, Donald Lloyd-Jones—designated as part of the Record on Appeal by the plaintiffs—conclusively establishes that American's move from New York to Texas did not begin until July 1979 (Pet. 37a-38a). On the date of the crash then,

Texas had no interest whatsoever in the subject matter of petitioners' lawsuits. Its law was properly held inapplicable in these actions.

III.

Petitioners' constitutional right to equal protection under the laws is not violated by the preclusion of punitive damages against American.

As was noted in Part I above, the two United States courts of appeals that have considered the issue agree that a state's decision to preclude punitive damages in wrongful death actions is sufficiently rationally related to a valid state purpose to pass muster under the Fourteenth Amendment. *In re Paris Air Crash,* 622 F.2d 1315 (9th Cir.), *cert. denied,* 101 S.Ct. 387 (1980); *Huff* v. *White Motor Corp.,* 609 F.2d 286 (7th Cir. 1979). A wrongful death action, as, traditionally, a creature of statute, is necessarily subject to statutory parameters. It is not unreasonable for a legislature to decide that while a personal injury victim should be granted the satisfaction of collecting punitive damages from his tortfeasor under appropriate circumstances, such damages will not be made available to persons one step removed from the wrong, *i.e.,* the heirs of a decedent.

In similar fashion, this Court and other courts who have ruled upon the constitutionality of statutory damages limits in tort actions have held such to be reasonable exercises of legislative power. *Duke Power Co.* v. *Carolina Environmental Study Group,* 438 U.S. 59 (1979); *Mobil Oil Corp.* v. *Higginbotham,* 436 U.S. 618 (1978); *Cyr* v. *B. Offen & Co.,* 501 F.2d 1145 (1st Cir. 1974); *Stucki* v. *Loveland,* 94 Idaho 621, 495 P.2d 571 (1972); *Glick* v. *Ballentine Produce, Inc.,* 396 S.W.2d 609 (Mo. 1965), appeal dismissed for want of a substantial federal question, 385 U.S. 5 (1966).

New York courts have similarly held that such a legislative decision does not violate that state's constitutional guarantee of equal protection. *Robert* v. *Ford Motor Co.*, 73 App. Div. 2d 1025, 424 N.Y.S.2d 747 (1980); *Hempel* v. *American Airlines, Inc.*, 15 Aviation Reporter 17,703 (N. Y. Sup. Ct. 1979). Indeed, the court in *Hempel* held that the parties in a personal injury action are entirely different from those in a wrongful death action. The two sorts of plaintiffs are not similarly-situated. The most basic prerequisite for testing equal protection principles was deemed missing.

CONCLUSION

Because petitioners cite none of the recognized considerations upon which the issuance of a writ of certiorari by this Court is based, and because the court of appeals correctly affirmed the granting of American's motion to strike petitioners' claims for punitive damages, petitioners' request for a writ of certiorari must be denied.

Respectfully submitted,

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